

APPEAL NO. 041371
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 10, 2004. The hearing officer decided that: (1) the compensable injury of _____, does not extend to include a disc herniation at L4-5; and (2) the decision of the Independent Review Organization (IRO), approving the request for spinal surgery, is not supported by a preponderance of the evidence. The appellant (claimant) appeals these determinations on sufficiency of the evidence grounds. The respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant attached photographs to his appeal in support of his position that the compensable injury extends to include a disc herniation at L4-5. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The claimant appears to assert that the hearing officer erred by allowing the carrier's required medical examination doctor to testify via telephone. The claimant did not raise this objection at the hearing below. Any error in the admission of such testimony was, therefore, waived and will not be addressed for the first time on appeal.

The hearing officer did not err in making the complained-of determinations. The extent-of-injury determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the compensable injury does not include a disc herniation at L4-5, the claimant is not entitled to spinal surgery to treat such condition. Section 408.021.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge